

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C. 20436

In the Matter of

**CERTAIN GPS DEVICES AND
PRODUCTS CONTAINING SAME**

Investigation No. 337-TA-602

**NOTICE OF COMMISSION DETERMINATION TO REVIEW IN PART A FINAL
DETERMINATION ON VIOLATION OF SECTION 337; SCHEDULE FOR FILING
WRITTEN SUBMISSIONS ON THE ISSUES UNDER REVIEW AND ON REMEDY,
THE PUBLIC INTEREST AND BONDING**

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part the final initial determination (“ID”) issued by the presiding administrative law judge (“ALJ”) on August 8, 2008, regarding whether there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Daniel E. Valencia, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-1999. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission’s electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 7, 2007, based on a complaint filed by Global Locate, Inc. (“Global Locate”). *72 Fed. Reg.* 25777 (May 7, 2007). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. § 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain GPS (Global Positioning System) devices and products containing the same by reason of infringement of various claims of United States Patent Nos. 6,417,801 (“the ‘801 patent”); 6,606,346 (“the ‘346 patent”); 6,651,000 (“the

'000 patent"); 6,704,651 ("the '651 patent"); 6,937,187 ("the '187 patent"); and 7,158,080 ("the '080 patent"). The complaint named five respondents: SiRF Technology, Inc. ("SiRF"); Pharos Science & Applications, Inc. ("Pharos"); MiTAC International Corp. ("MiTAC"); Mio Technology Ltd., USA ("Mio"); and E-TEN Information Systems Co., Ltd. ("E-TEN") (collectively, "respondents"). The notice of investigation was subsequently amended to add Broadcom Corporation ("Broadcom") as a complainant inasmuch as Broadcom acquired Global Locate.

On August 8, 2008, the ALJ issued his final ID, and on August 22, 2008, he issued his recommended determination on remedy and bonding. In his ID, the ALJ found a violation of section 337 in the importation and the sale after importation of certain GPS devices and products containing the same, in connection with the asserted claims of each of the six patents at issue. Respondents and the Commission investigative attorney (IA) each filed petitions for review on August 25, 2008. On September 5, 2008, Complainants and the IA each filed responses to the petitions for review.

On September 16, 2008, Respondents filed a motion for leave to reply in support of their petition for review of the ID. On September 22, 2008, Complainants opposed the motion.

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review the final ID in part. Specifically, the Commission has determined to review (1) ALJ's finding that Global Locate has standing to assert the '346 patent; (2) the ALJ's finding that SiRF directly infringes claim 1 of the '651 patent through its commercial activities; and (3) the ALJ's finding that SiRF directly infringes claim 1 of the '000 patent through its commercial activities. The Commission has determined not to review the remaining issues raised by the petitions for review, and has denied Respondents' motion for leave to file a reply.

The parties are requested to brief their positions on the issues under review with reference to the applicable law and the evidentiary record. In connection with its review, the Commission is particularly interested in responses to the following questions:

1. Please address the issue of whether Global Locate has standing to assert the '346 patent in light of provision 2.1 in RX-286. Please cite record evidence and/or relevant legal precedent to support your position.
2. Does SiRF practice the element "processing satellite signals ..." of the method of claim 1 of the '651 patent vicariously through end users of the accused products? *See BMC Resources, Inc. v. Paymentech, L.P.*, 498 F.3d 1373 (Fed. Cir. 2007) and *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318 (Fed. Cir. 2008). Please cite record evidence and relevant legal authority to support your position.
3. Does SiRF practice the third element ("at the remote receiver, representing said formatted data in a second format supported by the remote receiver") of the method of

claim 1 of the '000 patent vicariously through end users of the accused products? *See BMC Resources, Inc. v. Paymentech, L.P.*, 498 F.3d 1373 (Fed. Cir. 2007) and *Muniauction, Inc. v. Thomson Corp.*, 532 F.3d 1318 (Fed. Cir. 2008). Please cite record evidence and any relevant legal authority to support your position.

In connection with the final disposition of this investigation, the Commission may (1) issue an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) issue one or more cease and desist orders that could result in the respondent(s) being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see In the Matter of Certain Devices for Connecting Computers via Telephone Lines*, Inv. No. 337-TA-360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve or disapprove the Commission's action. *See* Presidential Memorandum of July 21, 2005, 70 *Fed. Reg.* 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

WRITTEN SUBMISSIONS: The parties to the investigation are requested to file written submissions on the issues identified in this notice. Parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the recommended determination by the ALJ on remedy and bonding. Complainants and the IA are also requested to submit proposed remedial orders for the Commission's consideration. Complainants are also requested to state the dates that the patents expire and the HTSUS numbers under which the accused products are imported. The written submissions and proposed remedial orders must be filed no later than close of business on Monday, October 27, 2008. Reply submissions must be filed no later than the close of business on Monday, November 3,

2008. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Any person desiring to submit a document to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 C.F.R. § 210.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46 and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46 and 210.50).

By order of the Commission.

/s/
Marilyn R. Abbott
Secretary to the Commission

Issued: October 9, 2008